

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

Priscilla Williams, Kimberly Napier, Penny Wolfe, Sandy Wizzard, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

The Charlotte-Mecklenburg Hospital Authority,  
d/b/a Atrium Health,

Defendants.

Civil Action No. 3:20-cv-00242

**DEFENDANT’S REPLY IN FURTHER  
SUPPORT OF ITS MOTION FOR  
SANCTIONS FOR PLAINTIFFS’ FAILURE  
TO FULLY COMPLY WITH COURT  
ORDER COMPELLING DISCOVERY  
RESPONSES**

Defendant The Charlotte-Mecklenburg Hospital Authority, d/b/a Atrium Health (“Defendant” or “Atrium Health”), by and through the undersigned counsel and pursuant to Federal Rules of Civil Procedure 37 and 41 and Local Rule 7.1, hereby submits this Reply to Plaintiffs’ Response in Opposition to Defendant’s Motion for Sanctions for Plaintiffs’ Failure to Fully Comply with Court Order Compelling Discovery Responses (Dkt. No. 67).

Plaintiffs’ Response focuses on the fact that, at the time they filed said Response, *on May 4, 2023*, they largely—although admittedly not completely—complied with their discovery obligations. This argument ignores the fact that Plaintiffs were to serve “**complete responses, without objection**”, to Atrium Health’s First Set of Interrogatories and Requests for Production of Documents no later than February 23, 2023. (*See* Feb. 13, 2023 Text Order.) At Plaintiffs’ request, they were then granted *an additional ten (10) days*, through and including March 13, 2023, to comply with the Order. (*See* Dkt. No. 62 and Feb. 23, 2023 Text Order.) Yet, by March 13, 2023, Plaintiffs were still not in compliance with the Court’s Order compelling their full and complete discovery responses, which necessitated Atrium Health filing its Motion for Sanctions.

At that point, Plaintiffs sought an extension to respond to the Motion for Sanctions (*see* Dkt. No. 65) and, finally, at that time, and nearly *nine (9) months after* their discovery responses were initially due, Plaintiffs began working to fully comply with their discovery obligations. Thus, Plaintiffs' Response, particularly with respect to their simplification of compliance as depicted in the chart included at page 3, ignores the fact that they simply *were not in compliance with the Court's February 13, 2023 Order compelling complete discovery responses by an extended deadline of March 13, 2023* or at the time Atrium Health filed its Motion for Sanctions. The chart below more accurately depicts Plaintiffs' efforts with respect to discovery:

Plaintiff Name	Date Plaintiff Served with Discovery Requests	Date Discovery Responses Served by Plaintiff	Date Supplemental Discovery Responses Served by Plaintiff	Dates/Numbers of Documents Produced	Date Verification Served by Plaintiff	Date Releases Served by Plaintiff
Leigh-Ann Caporale	06/08/2022	08/10/2022	01/19/2023	10/19/2022 (8 pages); 01/19/2023 (80 pages)	None	05/12/2023
Jennifer Gwaltney	06/30/2022	08/10/2022	03/13/2023 (identical to Responses served on 08/10/2022); 04/25/2023	03/13/2023 (29 pages); 05/03/2023 (6 pages)	10/18/2022; 03/13/2023	05/03/2023 (incomplete)
Elizabeth Meybohm	06/08/2022	08/10/2022	04/25/2023	01/19/2023 (9 pages); 05/03/2023 (6 pages)	None	05/03/2023
Kimberly Napier	06/08/2022	08/10/2022	04/25/2023	01/19/2023 (90 pages); 04/25/2023 (5 pages); 05/03/2023 (6 pages)	10/18/2022	05/03/2023 (incomplete)
Yvette Phillips	06/08/2022	08/10/2022	04/25/2023	01/19/2023 (30 pages); 05/03/2023 (5 pages)	10/18/2022	05/03/2023
Wilisene Sloan	06/08/2022	08/10/2022	04/25/2023	01/19/2023 (5 pages); 04/25/2023 (4 pages)	10/18/2022	04/25/2023 (incomplete)
Lisa Smith-Benge	06/08/2022	08/10/2022	04/25/2023	10/19/2022 (62 pages); 01/19/2023 (16 pages); 04/25/2023 (10 pages); 05/03/2023 (5 pages)	10/18/2022	05/03/2023
Priscilla Williams	06/08/2022	08/10/2022	04/25/2023	04/25/2023 (79 pages); 05/03/2023 (6 pages)	None	05/03/2023
Sandy Wizzard	06/08/2022	03/13/2023	04/25/2023	03/13/2023 (72 pages);	03/13/2023	05/03/2023

				05/03/23 (6 pages)		
Penny Wolfe	06/08/2022	08/10/2022	04/25/2023	04/25/2023 (6 pages); 05/03/2023 (6 pages)	05/05/2023	05/03/2023
Shanada London	06/08/2022	05/04/2023	None	05/03/2023 (5 pages)	05/04/2023	05/03/2023
Jeffrey Reitkerk	06/08/2022	None	None	None	None	None

As demonstrated above, Plaintiffs did not begin significantly addressing their discovery deficiencies, until on or around April 25, 2023—*after* their initial deadline to respond to Atrium Health’s Motion for Sanctions had already passed—and notably, Atrium Health could not serve any third-party subpoenas in this matter (due to the missing authorizations) until May 3, 2023. In sum, Atrium Health first began following up on Plaintiffs’ discovery deficiencies on September 15, 2022. (*See* Dkt. No.58-6.) From that point, it took: (1) at least five additional emails and/or attempts to follow up with Plaintiffs (*see* Dkt. No. 58-7); (2) a Motion to Compel (Dkt. No. 58 & 58-1); (3) an Order compelling complete responses (*see* Feb. 13, 2023 Text Order); (4) a Motion for Sanctions (Dkt. No. 67); (5) multiple extensions; and (6) approximately ten (10) months before Plaintiffs substantively complied with their discovery obligations.

Even now, and as highlighted above, deficiencies remain with respect to Plaintiffs’ discovery responses and particularly with respect to incomplete or missing authorizations from Plaintiffs Reitkerk, Gwaltney, Sloan, Napier, Williams, Phillips, and Wolfe.<sup>1</sup> Further, Plaintiff Reitkerk still has not served any discovery responses and there has been no explanation for his total and complete lack of effort to comply with his discovery obligations over the course of ten (10) months. Accordingly, at least with respect to Plaintiff Reitkerk, dismissal is warranted. Dismissal is also arguably warranted with respect to Plaintiff London, who has no excuse for not

---

<sup>1</sup> Counsel for Atrium Health raised these deficiencies with counsel for Plaintiffs on May 11, 2023. Counsel for Plaintiffs indicated that she would provide a response, but as of the filing of this Reply, Atrium Health has yet to receive the same.

serving *any* discovery responses until *months after* the Court ordered full and complete discovery responses from all Plaintiffs. With respect to the other Plaintiffs, at a minimum, Atrium Health should be entitled to recover its fees and costs associated with filing its Motion to Compel and Motion for Sanctions.

Dated: May 16, 2023

/s/ Stephen D. Dellinger

Stephen D. Dellinger, Bar No. 16609

sdellinger@littler.com

Elizabeth H. Pratt, Bar No. 46132

epratt@littler.com

LITTLER MENDELSON, P.C.

Bank of America Tower

620 South Tryon Street, Suite 950

Charlotte, NC 28202

Telephone: 704.972.7000

Facsimile: 704.333.4005

Leslie A. Dent, *Admitted Pro Hac Vice*

ldent@littler.com

Pierre-Joseph Noebes, *Admitted Pro Hac Vice*

pnoebes@littler.com

LITTLER MENDELSON, P.C.

3424 Peachtree Road N.E., Suite 1200

Atlanta, GA 30326.1127

Telephone: 404.233.0330

Facsimile: 404.233.2361

*Attorneys for Defendant*

## CERTIFICATE OF SERVICE

This is to certify that on May 16, 2023, the undersigned filed the foregoing using the Court's CM/ECF system which will send notification of such filing to the following CM/ECF participants in this case.

L. Michelle Gessner  
GESSNERLAW, PLLC  
602 East Morehead Street  
Charlotte, NC 28202  
michelle@mgessnerlaw.com

*Attorney for Plaintiffs*

/s/ Stephen D. Dellinger

Stephen D. Dellinger, Bar No. 16609  
sdellinger@littler.com  
Elizabeth H. Pratt, Bar No. 46132  
epratt@littler.com  
LITTLER MENDELSON, P.C.  
Bank of America Tower  
620 South Tryon Street, Suite 950  
Charlotte, NC 28202  
Telephone: 704.972.7000  
Facsimile: 704.333.4005

Leslie A. Dent, *Admitted Pro Hac Vice*  
ldent@littler.com  
Pierre-Joseph Noebes, *Admitted Pro Hac Vice*  
pnoebes@littler.com  
LITTLER MENDELSON, P.C.  
3424 Peachtree Road N.E., Suite 1200  
Atlanta, GA 30326.1127  
Telephone: 404.233.0330  
Facsimile: 404.233.2361

*Attorneys for Defendant*